

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of )  
)  
)

Second Application by BellSouth )  
Corporation, BellSouth )  
Telecommunications, Inc. and )  
BellSouth Long Distance, Inc. for )  
Provisioning of In-Region, InterLATA )  
Services in Louisiana )  
)

CC Docket No. 98-121  
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AUG - 4 1998

PETITION TO DENY OF TIME WARNER TELECOM

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CC Docket No. 98-121

**PETITION TO DENY OF TIME WARNER TELECOM**

Time Warner Communications Holdings Inc. d/b/a Time Warner Telecom ("TWTC") hereby files its petition to deny the above-captioned application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively, "BellSouth") for approval to provide in-region, interLATA services in Louisiana.

**I. INTRODUCTION AND SUMMARY**

TWTC submits this petition for the purpose of discussing two specific and critical ways in which BellSouth has harmed TWTC's ability to compete in the local market in the BellSouth region. First, as of the filing of this petition, BellSouth has provided to TWTC only a small fraction of the performance measurement<sup>1</sup>

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<sup>1</sup> As used in this petition, the term "performance measurement" includes the categories of functions performed by an incumbent LEC that are to be measured and the methodology for computing performance. "Performance benchmarks" establish standards for determining whether an incumbent LEC

data that BellSouth has been obligated since September 1997 to provide to TWTC under the carriers' amended nationwide interconnection agreement. This failure must be deemed a violation of BellSouth's duty to provide nondiscriminatory access to the facilities and services (all of which are checklist items) covered by the performance measurement reporting requirements. A BOC simply cannot be deemed to have provided competitive LECs with nondiscriminatory access to services and facilities where, due to the absence of performance measurement data, the BOC can discriminate against competitive LECs almost at will without risk of detection or punishment.

Second, in the narrow class of services for which BellSouth has provided TWTC with performance measurement data, those data demonstrate that BellSouth has consistently failed to meet the primary performance benchmark ("mean time to restore" or "MTTR") established in its amended interconnection agreement with TWTC for repair of facilities. This consistent failure is powerful evidence that BellSouth's operations support systems or "OSS" repair functions are not adequate to support local competition at this time.

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has provided access to the competitive LEC at parity with the access provided by the incumbent to itself, its customers and other competitive LECs. Finally, "reporting" concerns the incumbent LEC's obligation to collect information described in the performance measurements, to organize that data in a logical manner and to provide it to competitive LECs and to regulators.

As the Commission is well aware, this evidence (the failure to provide performance measurement data and the failure to meet the benchmark for MTTR) is highly relevant to the instant application, notwithstanding the fact that TWTC does not provide service in Louisiana.<sup>2</sup> First, BellSouth's failure to provide TWTC with the performance measurement data (on services covered by the Section 271 checklist) appears to have been part of its regionwide strategy of noncompliance with the reporting requirements of individual interconnection agreements. Carriers in Louisiana would be harmed by this strategy as much as carriers like TWTC that provide service elsewhere in the BellSouth region.

Assuming, arguendo, that BellSouth's failure to provide performance data were not part of a regionwide strategy, the BOC's almost complete noncompliance with its reporting obligations would still be relevant to this proceeding. Evidence that a BOC resists entry in states other than the one in which it has filed a Section 271 application strongly indicates that the BOC will adopt a similar approach to the application state if Section 271 authority is granted (which it should not be in this case). In other words, if a BOC shows that it will not cooperate in opening its market where the focus of Section 271 review is absent, that same approach would lead the BOC to engage in

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<sup>2</sup> TWTC provides competitive local service to business customers in four areas within the BellSouth region: Orlando, Florida; Raleigh, North Carolina; Charlotte, North Carolina; and Memphis, Tennessee.

resistance tactics in a state after Section 271 approval has been granted.

BellSouth's failure to meet the MTTR benchmark in TWTC's amended interconnection agreement with BellSouth is also highly relevant to the instant application. This is because MTTR is an important measure of the level of OSS repair service provided by BellSouth to TWTC. BellSouth's OSS repair functions are the same regionwide. Thus, carriers in Louisiana can expect to experience the same repair problems TWTC has experienced.

**II. BELLSOUTH'S FAILURE TO PROVIDE TWTC WITH PERFORMANCE DATA SHOWS THAT BELLSOUTH CANNOT DEMONSTRATE CHECKLIST COMPLIANCE FOR THE SUBJECT SERVICES.**

The problems that TWTC has had in obtaining TWTC-specific performance data from BellSouth are fully described in the affidavit of Carolyn M. Marek, TWTC's Vice President - Regulatory Affairs for the Southeast Region, attached as Appendix A. As Ms. Marek explains, in June 1997, TWTC requested that BellSouth commit to enforceable performance measurements, benchmarks, and reporting.<sup>3</sup> After four months of negotiations, the parties signed Amendment No. 1 to their regionwide interconnection agreement. Amendment No. 1 established performance measurement categories for five services that are critical to TWTC's ability to compete with BellSouth: (1) service provisioning and maintenance for facilities that TWTC leases from BellSouth (such as interconnection trunks); (2) interim number portability

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<sup>3</sup> See Marek Aff. ¶ 7.

("INP"); (3) updates to the BellSouth directory assistance database to include TWTC customer information; (4) updates to BellSouth's line information database ("LIDB") to include TWTC customer information; and (5) provision of BellSouth customer service records ("CSRs") to TWTC.

Amendment No. 1 also included specific reporting requirements. Paragraph 2.2 states as follows:

BellSouth shall provide measurement data on a monthly basis for each state in the Territory in which Time Warner offers service. The data shall be reported to Time Warner in a format that will enable Time Warner to compare BellSouth's performance for itself and all other [competitive LECs] as a group with respect to a specific measurement to BellSouth's performance for Time Warner for that same specific measurement.<sup>4</sup>

Notwithstanding this unambiguous commitment, BellSouth has found excuse after excuse over the past eleven months to avoid compliance. This is so, notwithstanding repeated requests made by TWTC for the performance data and several promises made by senior BellSouth employees that the performance data would be provided. Due in part to its frustration over unfilled performance measurement data requests, in December 1997, TWTC sent a "Notice and Complaint" ("complaint") to BellSouth. The complaint stated TWTC's intent to pursue the formal alternative dispute resolution provisions in the carriers' interconnection agreement unless a broad range of competitive problems that TWTC was experiencing were resolved.<sup>5</sup> In meetings regarding the

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<sup>4</sup> See id., Exhibit No. 2 (Amendment No. 1).

<sup>5</sup> See id., Exhibit No. 4 (Notice and Complaint).

complaint, the parties determined that performance reporting was a major source of dispute. In January 1998, however, BellSouth representatives promised to provide TWTC with performance reports containing TWTC-specific data. Based in part on this promise, TWTC agreed to hold its complaint in abeyance.<sup>6</sup>

But BellSouth continued to send TWTC worthless reports that contained essentially no TWTC-specific data. Moreover, William Stacy, Vice President - Services for the Interconnection Operations department of BellSouth Telecommunications, Inc., admitted during a Section 271 workshop held in Tennessee on March 5, 1998, that BellSouth decided by November 1997 not to even attempt to collect or report the performance measurement data required by individual carrier interconnection agreements.<sup>7</sup> Thus, BellSouth apparently never intended to keep any of the commitments and promises it made after November to TWTC or any other competitive LEC in its region, including those in Louisiana, regarding performance benchmark data required by interconnection agreements. At worst, the promises made to TWTC were cynical attempts to keep TWTC from pursuing arbitration. At best, BellSouth entrusted dispute resolution under the TWTC agreement to employees with no knowledge of the BOC's direction regarding implementation of performance measurement reporting requirements contained in individual interconnection agreements.

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<sup>6</sup> See Marek Aff. ¶ 15.

<sup>7</sup> See id. ¶ 17.



Finally, in May, BellSouth actually sent to TWTC some TWTC-specific performance data on provisioning and repair (discussed in more detail below). On June 5, TWTC again notified BellSouth of its intent to pursue arbitration if BellSouth did not begin reporting the rest of the performance data required by Amendment No. 1.<sup>8</sup> BellSouth responded with a new battery of detailed promises to provide the data by August or September.

Notwithstanding these recent promises, the fact remains that fully eleven months after signing Amendment No. 1, TWTC has received TWTC-specific performance measurement data from BellSouth on one of the five categories listed in Amendment No. 1: provisioning and repair. Thus, TWTC has no way of determining whether BellSouth is meeting the applicable performance benchmarks for INP, directory assistance, LIDB or CSRs. Indeed, as Ms. Marek points out in her affidavit, the absence of performance data from BellSouth means that BellSouth can discriminate against TWTC in its provision of these services almost at any time without detection.<sup>9</sup>

The implications for TWTC's business are potentially disastrous. For example, without performance benchmark data, TWTC customers could decide to switch their service to BellSouth because of problems with INP, directory assistance or LIDB and TWTC might never know the source of the customer dissatisfaction.

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<sup>8</sup> See id. ¶ 21.

<sup>9</sup> See id. ¶ 27.

Even where TWTC's customers notify TWTC of the source of the problem, TWTC will be unable to fix service problems caused by BellSouth in any comprehensive way or have adequate data to pursue remedies unless TWTC has access to adequate reports on BellSouth's performance.

TWTC's inability to obtain performance measurement data from BellSouth is also highly relevant to this proceeding. First, all of the services for which BellSouth is required to provide performance data under Amendment No. 1 are covered by the requirements of the checklist. Thus, BellSouth is required to provide INP to competitors under Section 271(c)(2)(B)(xi). BellSouth is required to include competitive LEC customers in its directory assistance database pursuant to its obligation to provide access to directory assistance as an unbundled element under Section 271(c)(2)(B)(ii).<sup>10</sup> BellSouth is required to give competitors nondiscriminatory access to databases, including LIDB,<sup>11</sup> and associated signaling necessary for call routing and completion under Section 271(c)(2)(B)(x). Finally, BellSouth itself states that its responsibility to provide

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<sup>10</sup> In the Local Competition First Report and Order, the FCC found that incumbent LECs must provide unbundled access to incumbent LEC directory assistance databases to allow "entry of the requesting carrier's customer information into the database." See Local Competition Proceeding, First Report and Order, 11 FCC Rcd 15499, ¶ 538 (1996).

<sup>11</sup> In the Local Competition First Report and Order, the FCC specifically found that incumbent LECs must provide competitive LECs access to LIDB as part of the incumbent LECs' obligation to provide non-discriminatory access to unbundled signaling. See id. ¶ 484.

nondiscriminatory access to OSS pre-ordering functions under Sections 271(c)(2)(B)(ii) and (xiv) includes providing nondiscriminatory access to CSRs.<sup>12</sup>

Moreover, BellSouth's refusal to provide performance measure data was apparently part of its regionwide strategy of collecting only data required by Georgia's OSS performance requirements. Thus, the problems experienced by TWTC would be experienced by any CLEC attempting to monitor BellSouth service in Louisiana pursuant to performance measurement requirements contained in an interconnection agreement with BellSouth.

In previous Section 271 orders, the Commission has held that BOCs cannot demonstrate that they provide adequate access to OSS and other checklist requirements without providing the FCC with adequate performance measurement data.<sup>13</sup> It is equally true that BellSouth cannot demonstrate that it provides nondiscriminatory access to its network and OSS unless it provides its competitors as well as regulators with adequate performance measure data. Where the BOC has refused to provide this information to

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<sup>12</sup> See BellSouth Stacy OSS Aff. ¶ 11.

<sup>13</sup> See Application of Ameritech Michigan Pursuant to Section 271, 12 FCC Rcd 20543, ¶¶ 204-213 (access to OSS), ¶¶ 232-235 (interconnection trunk blockage) (1997) ("Ameritech Michigan Order"). In addition, the FCC's recent NPRM in its performance measurement and reporting requirements proceeding further illustrates the importance of these requirements. See Performance Measurements and Reporting Requirements for Operations Supports Systems, Interconnection, Operator Services and Directory Assistance, CC Docket No. 98-56, RM-9101, Notice of Proposed Rulemaking (rel. Apr. 17, 1998).

competitors, the FCC must hold that the BOC has failed to provide nondiscriminatory access to the facilities and services in question in violation of the requirements of the Section 271 competitive checklist. Mere promises to provide performance data are insufficient to meet the requirements of Section 271.<sup>14</sup>

In addition, the FCC must deem evidence of failure or refusal to provide performance data to competitors as strong evidence that granting Section 271 relief is inconsistent with the public interest prong of Section 271. This is because, absent a demonstrated commitment by the BOC to provide competitors with performance benchmark data, there can be no way to tell if the BOC will comply with its obligations under the Section 271 checklist after it has entered into the in-region, interLATA market.

In either case, BellSouth's failure to comply with the reporting requirements of its interconnection agreement with TWTC (and no doubt others) at the very least demonstrates that BellSouth must not be granted Section 271 approval until it complies with national performance measurements, benchmarks and reporting requirements. BellSouth has itself apparently chosen to pursue a policy of collecting performance measurement data for

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See Ameritech Michigan Order ¶ 55 ("Paper promises do not, and cannot, satisfy a BOC's burden of proof. In order to gain in-region, interLATA entry, a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions, instead of prospective evidence that is contingent on future behavior").

all CLECs in the same manner even if individual interconnection agreements contain different measurement, benchmark and reporting requirements. BellSouth must therefore be held accountable to its own policy. BellSouth should not be granted Section 271 approval until it has complied with a commitment to national performance measurements, benchmarks and reporting requirements, such as the ALTS-amended Local Competition Users Group proposal. Such compliance can be viewed as complete only if BellSouth has agreed to be bound by pre-established penalties for failure to meet benchmarks and to a process for speedy resolution of any disputes regarding its performance.

**III. WHERE BELL SOUTH HAS PROVIDED TWTC WITH PERFORMANCE DATA, THOSE DATA SHOW THAT BELL SOUTH DOES NOT PROVIDE TWTC WITH ADEQUATE REPAIR SERVICE.**

As mentioned, provisioning and repair is the only category in which BellSouth has provided TWTC with performance measurement data that are of any use in determining the adequacy of services provided by BellSouth. But especially with regard to repair, these data confirm TWTC's fear that BellSouth does not provide TWTC with adequate service.

This problem is most clearly illustrated with BellSouth's MTTR for facilities TWTC leases from BellSouth. As explained in the affidavit of Jeffrey Ross, TWTC's Vice President of National Operations, attached as Appendix B, MTTR measures the total time from when TWTC submits to BellSouth a trouble ticket on a facility TWTC leases from BellSouth to the time when TWTC's customer verifies that the repair has been made, minus "stop

time."<sup>15</sup> Stop time includes, among other things, the time during which BellSouth is unable to access the customer's premises to remedy a problem.

The FCC has held that repair of facilities leased from an incumbent is an OSS function for which BOCs must demonstrate parity in order to comply with their obligation to provide nondiscriminatory access to their OSS.<sup>16</sup> To meet this standard, BellSouth must provide TWTC with MTTRs for repair of facilities used by BellSouth's own end-user customers as well as MTTRs for TWTC's leased facilities. In the absence of such comparative data, however, TWTC was forced to adopt MTTR performance benchmarks for the facilities it leases from BellSouth.

Thus, as explained by Mr. Ross, TWTC and BellSouth agreed to two hours as the MTTR benchmark for high capacity circuits leased by TWTC for exchanging traffic with BellSouth.<sup>17</sup> The same benchmark should logically apply also to high capacity circuits TWTC leases for the purpose of connecting its business customers to TWTC transmission equipment collocated in BellSouth central offices. This is because these connections are similar as a matter of engineering to high-capacity interconnection trunks and

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<sup>15</sup> See Ross Aff. ¶ 15.

<sup>16</sup> See Ameritech Michigan Order ¶ 140.

<sup>17</sup> See Ross Aff. ¶ 18.

the steps taken by BellSouth to repair the two kinds of facilities are the same.<sup>18</sup>

In his affidavit, Mr. Ross has reproduced the MTTR data that BellSouth has itself provided to TWTC for high capacity circuits TWTC has leased from BellSouth.<sup>19</sup> These are circuits TWTC leases from BellSouth to connect TWTC customers with TWTC's transmission equipment collocated in BellSouth central offices. As the data demonstrate, BellSouth has failed to meet the two hour benchmark every month for which BellSouth provided data (January-June of 1998). In four of the six months for which data were provided, the MTTR for high capacity circuits was more than double the two hour benchmark. In addition, BellSouth's MTTR shows no sign of improving over time. For example the MTTR for June was 5.55 hours, the second highest of the six reported months.<sup>20</sup>

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<sup>18</sup> See id. ¶ 20. While TWTC has often ordered the high capacity lines in question from BellSouth's interstate access tariff, this in no way relieves BellSouth of the obligation to provide OSS access to TWTC in compliance with the competitive checklist. The Section 271 competitive checklist covers both unbundled loops ordered under interconnection agreements (see Section 271(c)(2)(B)(ii) -- checklist applies to unbundled elements subject to Sections 251(c)(3) and 252(d)(1)) and all other unbundled loops (see Section 271(c)(2)(B)(iv) -- checklist applies to all loop connections between end-users and the BOC central office).

<sup>19</sup> See id. ¶ 22. These data do not include interconnection trunks because of the difficulty TWTC has had in determining what MTTR data apply to interconnection trunks and what data apply to other facilities.

<sup>20</sup> BellSouth may attempt to argue that the MTTR for unattended equipment (four hours) that appears in Section 4.1.3 of Amendment No. 1 should apply to the high-capacity loops at issue. See Marek Aff., Exhibit No. 2 (Amendment No. 1). Even assuming that this is the more analogous MTTR (which it

BellSouth's consistent failure to meet the two hour benchmark as well as its inability to improve its MTTR for TWTC's facilities are strong evidence that BellSouth does not provide nondiscriminatory access to the repair functions of its OSS. That BellSouth, which possesses virtually all of the bargaining power in negotiations with TWTC, set the benchmark at two hours means that it is at the very least a standard that BellSouth is capable of meeting. Moreover, in the absence of comparative data, the FCC has stated that benchmarks agreed to by the parties in interconnection agreements are helpful evidence of the level of OSS service required of a BOC under the Section 271 checklist.<sup>21</sup> The MTTR data for TWTC's facilities therefore indicate that significant improvement in BellSouth's repair functionalities is needed before BellSouth will meet the nondiscrimination standard.

Moreover, competitive LECs operating in Louisiana are likely to experience the same problems that TWTC has had in North Carolina, Tennessee and Florida. As explained by Mr. Ross, TWTC submits all of its repair requests to BellSouth via a single telephone number to BellSouth's two regional trouble centers

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is not), and even assuming that all of the high-capacity loops in question were unattended, BellSouth's own data reveal that it has still failed to meet the BOC's preferred MTTR (four hours) four out of the six months for which it has provided MTTR data to TWTC. See Ross Aff. ¶ 22.

<sup>21</sup> See Ameritech Michigan Order ¶ 141.



known as "Access Customer Advocate Centers" or "ACACs."<sup>22</sup> The ACACs are located in Atlanta, Georgia and Birmingham, Alabama.<sup>23</sup> The ACACs provide a single point of contact for CLEC repair requests from anywhere in the BellSouth region.<sup>24</sup> Any difficulties TWTC has experienced with BellSouth MTTRs for problems reported in this fashion would therefore likely be experienced by competitive LECs operating in Louisiana.

Finally, it is important to reemphasize the potentially profound effect that BellSouth's failure to meet the two hour MTTR benchmark has on TWTC's business. Although TWTC provides service to its customers predominantly over its own network, there are some instances in which it is more efficient for TWTC to lease facilities from BellSouth. Where this is the case, TWTC must rely on BellSouth to perform maintenance and repair on those facilities. TWTC's business customers expect that these repair functions will be performed promptly. BellSouth's failure to meet the two hour benchmark is perceived by TWTC's customers as TWTC's own failure. Moreover, it is of little help when a customer understands that high MTTRs are BellSouth's and not TWTC's fault. No more damaging evidence of this fact could exist than TWTC customer complaints that they receive superior repair service from BellSouth as a BellSouth end-user customer than as

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<sup>22</sup> See Ross Aff. ¶ 20.

<sup>23</sup> See BellSouth Funderburg Aff. pp. 5-8.


<sup>24</sup> See id. p. 7.

an end-user customer of TWTC. Yet TWTC has received just such complaints.<sup>25</sup>

### CONCLUSION

BellSouth's failure to provide TWTC with performance data or to meet the MTTR benchmark is strong evidence that BellSouth is not able to meet the requirements of the competitive checklist. Thus, for the reasons described herein, the FCC should deny BellSouth's application under Section 271 to provide in-region, interLATA services in Louisiana.

Respectfully submitted,

  
\_\_\_\_\_  
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ATTORNEYS FOR TIME WARNER  
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August 4, 1998

Note: The following materials are not included in TWTC's diskette filing: Marek Affidavit, Exhibit Nos. 1-6 and Ross Affidavit, Exhibit No. 1. These materials are, however, on file with the Commission.

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<sup>25</sup> See Ross Aff. ¶ 24.

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APPENDICES TO

PETITION TO DENY OF TIME WARNER TELECOM

Appendix

Title

- |   |  |
|---|--|
| A | Affidavit of Carolyn M. Marek regarding performance measures, benchmarks, and reporting requirements |
| B | Affidavit of Jeffrey Ross regarding performance benchmarks for maintenance and repair services       |



# APPENDIX A

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the matter of

Second Application by BellSouth  
Corporation, BellSouth  
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CC Docket No. 98-121

AFFIDAVIT

OF

CAROLYN M. MAREK

ON BEHALF OF

TIME WARNER TELECOM

Time Warner Telecom Appendix A

1. My name is Carolyn M. Marek. I am Vice President - Regulatory Affairs for the Southeast Region of Time Warner Communications Holdings Inc. d/b/a Time Warner Telecom ("TWTC"). I am responsible for overseeing TWTC's regulatory and legislative advocacy in the BellSouth region. I have held my current position since January of 1995. Prior to that time, I worked for AT&T for over 13 years. I started at AT&T as an Associate Account Executive and later worked as a National Account Manager. I was eventually promoted to the position of State Manager for Kentucky. I held that position from June 1991 to August 1994. As a State Manager I was responsible for AT&T's regulatory advocacy in the state of Kentucky. In August of 1994 I was promoted to the position of District Manager for AT&T Network Systems, the position I held until I joined TWTC.

2. I submit this affidavit to discuss the application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. ("BellSouth") to provide in-region, interLATA services in Louisiana. The central purpose of this testimony is to comment on (1) the need for comprehensive and enforceable performance measurements, reporting requirements, and benchmarks; (2) the problems TWTC has encountered in attempting to convince BellSouth to adopt comprehensive and enforceable performance measurements, reporting requirements and benchmarks; and (3) BellSouth's failure to provide TWTC with performance measurement data that BellSouth is required to provide to TWTC.

3. As used in this affidavit, the terms "performance measurement", "performance benchmark" and "reporting" have the

same definitions as those that the FCC adopted in the Notice of Proposed Rulemaking in its proceeding on performance measurements and operations support systems, CC Docket No. 98-56, RM-9101.

Thus, the term "performance measurement" includes the categories of functions performed by an incumbent LEC that are to be measured and the methodology for computing performance.

"Performance benchmarks" establish standards for determining whether an incumbent LEC has provided access to the competitive LEC at parity with the access provided by the incumbent to itself, its customers and other competitive LECs. Finally, "reporting" concerns the incumbent LEC's obligation to collect information described in the performance measurements, to organize that data in a logical manner (e.g., providing separate categories of performance measurement data for different urban and rural markets within a state) and to provide it to competitive LECs and to regulators.

4. Performance measurements, benchmarks and reporting requirements are critical to TWTC's ability to compete in the provision of exchange and exchange access services. They offer a competing LEC like TWTC the only feasible means of monitoring the extent to which an incumbent provides TWTC nondiscriminatory access to the incumbent's network facilities. For example, incumbent LECs often do not provide reports on services provided to competitive LECs that can be compared to the reports incumbent LECs generate internally for similar functions provided to incumbent LEC end user customers. Effective performance measurements, however, obligate incumbent LECs to report



information regarding both the services they provide their own customers and the same services they provide to competitive LECs in a format that permits "apples-to-apples" comparisons between these activities. These comparisons enable competitive LECs to determine whether they receive services at parity with the incumbent's customers.

5. While the role of performance measurements, reporting, and benchmarks has therefore become critical for the successful development of local competition, these requirements were not perceived to be as important when the local market was first opened to competition after the passage of the Telecommunications Act of 1996 ("1996 Act"). As a result, the master (regionwide) interconnection agreement that TWTC signed with BellSouth on June 1, 1996 ("Master Agreement"), the first interconnection agreement BellSouth signed with a CLEC after the passage of the 1996 Act, included only four provisions dealing with incumbent LEC performance. Specifically, Sections 6.04 (trunk group maintenance), 10.0 (trunk group grade of service), 11.02 and 11.04 (local interconnection trunk group provisioning) each includes performance benchmarks. The Master Agreement did not require that BellSouth provide TWTC with performance reports. Nor did the Master Agreement include penalties if BellSouth failed to comply with the performance measurements. A copy of the Master Agreement is attached as Exhibit No. 1 to this affidavit.

6. Although TWTC signed its interconnection agreement with BellSouth in 1996, TWTC did not begin serving local customers